

EXHIBIT A

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
SUCR 071882

* * * * *

COMMONWEALTH OF MASSACHUSETTS

-VS-

MOTION HEARING
DAY TWO

SHAWN DRUMGOLD

* * * * *

TRANSCRIPT OF PROCEEDINGS

BEFORE: ROUSE, J

July 30, 2003
Boston, Massachusetts

APPEARANCES:

DAVID MEIER, Esquire, Assistant District
Attorney, for the Commonwealth

ROSEMARY SCAPICCHIO, Esquire, for the Defendant

Mary M. Wrighton
Official Court Reporter

I N D E X

| <u>WITNESSES:</u> | <u>PAGE</u> |
|--|-------------|
| LOLA ALEXANDER | |
| direct examination by Ms. Scapicchio | 3 |
| cross examination by Mr. Meier | 17 |
| TRUE SEE ALLAH | |
| direct examination by Ms. Scapicchio | 56 |
| cross examination by Mr. Meier | 70 |
| redirect examination by Ms. Scapicchio | 81 |
| ANTONIO ANTHONY | |
| direct examination by Ms. Scapicchio | 95 |
| cross examination by Mr. Meier | 118 |
| redirect examination by Ms. Scapicchio | 165 |
| THERON DAVIS | |
| direct examination by Ms. Scapicchio | 170 |
| cross examination by Mr. Meier | 172 |

* * * * *

EXHIBITS:

| | |
|---------------------|----|
| No. 6 - diagram | |
| marked and admitted | 21 |
| No. 7 - calendar | |
| marked and admitted | 23 |

1 (Whereupon, the proceedings were
2 reconvened at 9:45 o'clock a.m.)

3 THE COURT: Good morning. Are you
4 ready to proceed?

5 MS. SCAPICCHIO: I am. Could I have
6 Lola Alexander, please?

7
8 LOLA ALEXANDER,
9 called as a witness, being first duly sworn,
10 was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MS. SCAPICCHIO:

13 Q Good morning, Ms. Alexander.

14 A Good morning.

15 Q In a loud, clear voice, could you please state
16 your name, spelling both your first and your last
17 name for the court reporter?

18 A My name is Lola Alexander. L-o-l-a,
19 A-l-e-x-a-n-d-e-r.

20 Q Okay. And back in August 19 of 1988, were did
21 you live?

22 A Homestead Street.

23 Q Okay. And who did you live there with?

24 A Me and my family:

1 Q Okay. And did your family include your daughter
2 Mary Alexander?

3 A Yes, it did.

4 Q And your grandson?

5 A Tamaka, yes.

6 Q Okay. And at some point in time on August 19,
7 1988, were you in the house when something
8 happened outside?

9 A Yes, I was.

10 Q Okay. Can you tell me whether or not your
11 daughter was in the house at the same time?

12 A No, she wasn't in the house.

13 Q Okay. And at some point in time did you become
14 aware of the fact that there had been a shooting
15 on Humboldt Ave.?

16 A Yes, because I heard it.

17 Q Okay. And after you heard -- tell the Court
18 exactly what you heard.

19 A I just heard some shots but I didn't -- I went to
20 the porch and asked my daughter to come in with
21 her son because she was sitting on the porch with
22 her little son. I said, someone's shooting out
23 there, come in the house, and that was it.

24 Q Did she follow your advice?

1 A She did follow my advice and brought herself and
2 the baby in the house.

3 Q At the time that you went out on the porch to
4 tell your daughter to come in the house, did you
5 see anyone in the area?

6 A I didn't pay it any attention. I just heard the
7 shots and I went out for my daughter and her baby
8 to come in. I didn't even try to look up that
9 way. I was afraid. I didn't do anything around
10 in the neighborhood like that. I didn't even
11 look up.

12 Q At some point after the shooting, can you tell me
13 whether or not you were visited by any Boston
14 Police officers?

15 A I was visited by the detectives at numerous of
16 times.

17 Q When you say numerous of times, can you qualify
18 that for us? How many times do you think that
19 the Boston Police detectives came to speak to
20 you?

21 A They came to speak to me about six to eight times
22 and called on my phone.

23 Q Okay. When you say called on your phone --

24 A They were calling me at night after I get home

1 from work.

2 Q Okay. And would they contact you in any other
3 way other than calling you or coming by your
4 house?

5 A They come to my job and I asked them, what were
6 they doing because I haven't said anything to
7 them about my job. They found me and said, well,
8 we just want to ask you some questions. What
9 questions you want to ask me? Same questions you
10 asked me at my house? I said I didn't see
11 nothing and I didn't -- I didn't hear nothing. I
12 didn't see nothing and that was it. Well, we
13 going to subpoena you. Well, you have to
14 subpoena me because I didn't see nothing.

15 Q Okay. Were you present when anyone from the
16 Boston Police came by to speak to your daughter?

17 A Yes.

18 Q Okay. And on how many occasions can you remember
19 the Boston Police coming by to speak to your
20 daughter?

21 A Oh, they -- it seemed like they lived at my
22 house, that's how many times they are there.

23 Q It seemed like they lived at your house?

24 A Yeah.

1 Q Can you estimate for us how many times they may
2 have been by?

3 A During the hearing and stuff, whatever came up, I
4 know they have been by there twenty times or
5 more.

6 Q Twenty times?

7 A Seemed like they came three and four times a
8 week.

9 Q Three to four times a week?

10 A That's what it seems like.

11 Q For how long a period of time did they come by
12 your house three or four times a week?

13 A They came for months.

14 Q Okay. When they came by your house, did they sit
15 down and speak with either you or your daughter?

16 A Well, they always had to speak with my daughter,
17 Mary, and about the last two times they brought
18 some book with some pictures in it and I was
19 standing right there beside her. I said you're
20 not going to keep harassing her, my daughter is
21 sick, my daughter doesn't need to go through all
22 of this stuff.

23 Q Did you have any conversation with any Boston
24 Police detectives regarding your daughter's

1 illness?

2 A Yes, I did.

3 Q And do you remember what you said to the Boston
4 Police detectives regarding your daughter's
5 illness?

6 A I said to them that my daughter was sick with
7 malignant cancer at the brain and she was not
8 able to participate in this, this activity.
9 Well, we have to talk to her and they just kept
10 persisting.

11 Q Okay. And you had talked at some point about
12 them bringing some photographs?

13 A Yes, they did.

14 Q First of all, how many times do you remember the
15 Boston Police bringing photographs by to have
16 your daughter look at them?

17 A I can remember twice but they had her, carried
18 her to the police station, had her come there for
19 about three times.

20 Q Okay. So you think altogether five times --

21 A Yes.

22 Q -- they showed her photos?

23 A Yes.

24 THE COURT: I'm not sure that was the

1 testimony.

2 MS. SCAPICCHIO: I'm sorry, Judge?

3 THE COURT: Could you re-ask that,
4 please?

5 BY MS. SCAPICCHIO:

6 Q You recall that she went to the police station on
7 three separate occasions?

8 A Yes.

9 Q Okay. And she went to the police station to look
10 at photographs?

11 A Yes.

12 Q Okay. And then you remember two additional
13 occasions that the police officers came to the
14 house where she looked at photographs?

15 A Yes.

16 Q So altogether there would have been five
17 occasions that you remember --

18 A Yes.

19 Q -- that the Boston Police showed your daughter
20 photographs?

21 A Yes.

22 Q Were you present at the house when they showed
23 your daughter photographs?

24 A Yes.

1 Q Do you remember anything about what happened
2 during the time period that the Boston Police
3 were showing your daughter photographs?

4 A I remember on one occasion they kept -- she said,
5 well, I don't, I don't see nobody, I don't see
6 anyone on here, and they kept saying, is this
7 him, is this him, kept pointing to the photo
8 album. I said, don't make her say that it's
9 someone and it's not, she doesn't know. She kept
10 on saying she didn't know. They said, is this
11 him, is this him.

12 Q Do you remember the officers that pointed to an
13 individual photograph and said, is this him, is
14 this him?

15 A I forgot that officer's name.

16 Q Do you know whether or not, if I suggested that
17 it was --

18 A O'Malley or something. I forgot his name.

19 Q You think it was O'Malley?

20 A Yes.

21 Q Okay. If I suggested to you Detective Walsh or
22 Sergeant Murphy, would that ring a bell?

23 A Murphy, that's who it was.

24 Q So you remember Detective Murphy pointing to a

1 photograph of an individual and asking your
2 daughter specifically whether or not that was the
3 person who was jumping over the Edison fence?

4 A Yes.

5 Q Okay. And your daughter's response was what?

6 A She didn't know who it was. She didn't see
7 nobody. She didn't see nobody's face.

8 Q Okay. And other than that occasion where they
9 pointed to a single photograph, you remember four
10 other occasions that they showed your daughter
11 photographs?

12 A Yes. That's one more at my house and three at
13 the police station. I wasn't there at the police
14 station.

15 Q Okay. The second occasion at your house when
16 they showed her photographs, can you tell us what
17 the police did on that occasion to show the
18 photographs to your daughter?

19 A Well, both of them kept, they kept, do you see
20 anyone, do you see the person that we're looking
21 for? And both of them kept talking to her like
22 at the same time, you know. I said, you all
23 don't need to harass my daughter. She has severe
24 headaches. My daughter, she said, I don't know,

1 I don't know. They said, is this him, is this
2 him.

3 Q Okay. So on two separate occasions at your house
4 you heard Boston Police detectives point to a
5 single photograph and ask your daughter whether
6 or not that was the person that she saw?

7 A Yes, because I was standing right beside her.

8 Q Okay. And at some point in time during the
9 pendency of this case, your daughter was being
10 treated for her brain cancer?

11 A Yes.

12 Q And what hospital was she being treated at?

13 A At Boston Medical and Carney Hospital. Carney
14 and Boston Medical.

15 Q Okay. And did you have any conversations with
16 the Boston Police detectives, and specifically
17 Detective Murphy, regarding your daughter's
18 treatment at these medical centers?

19 A Yes. I said it to both of the detectives.

20 Q When you said it, what did you specifically say?

21 A I said to them that my daughter's being treated
22 for malignant cancer at the brain, she's not up
23 to be tolerated with all this stuff. I have to
24 sit up with her every night, hold her head in my

1 lap, and my daughter don't remember nothing that
2 go on from day to day so how she going to
3 remember who's who from whatever.

4 Q Okay. So you remember having a conversation with
5 two detectives and specifically informing them
6 that your daughter's cancer prevented her from
7 remembering things?

8 A Yes.

9 MR. MEIER: Judge, with all due respect

10 I --

11 THE COURT: I'll see you at side bar.

12 (Whereupon, the following discussion
13 occurred at side bar:)

14 THE COURT: Notwithstanding Mr. Meier's
15 great latitude in not objecting, I object to your
16 leading questions to these witnesses which are on
17 significant issues in the case. They can testify
18 in their own words without you suggesting the
19 answer to them because this is very important,
20 and you also have a habit of summarizing
21 testimony they haven't given. So I want to make
22 very clear, since I am the fact finder, that the
23 testimony is, indeed, the witness's and not being
24 suggested to them by you. Okay?

1 MS. SCAPICCHIO: I apologize, Your
2 Honor.

3 THE COURT: Was that the reason you
4 were coming to side bar?

5 MR. MEIER: Yes, Your Honor. Just, in
6 all candor, just as the government might well
7 argue to a jury as a fact finder in a traditional
8 case that certain witnesses should not be
9 believed because of the manner in which they
10 answered questions or the manner in which
11 questions were put to them on the witness stand,
12 you know, I would reserve the right, to the
13 extent that the government has that position, at
14 the close of the hearing to argue to the Court.

15 THE COURT: Okay. I just want to make
16 sure the testimony they give is their own.
17 Obviously we all have a vested interest in that
18 and I think your questions are leading and
19 suggestive of the answers and I really want to
20 hear from the witness. Okay.

21 MS. SCAPICCHIO: Thank you.

22 (Whereupon, the discussion at side bar
23 was concluded.)

24 BY MS. SCAPICCHIO:

1 Q Ms. Alexander, could you tell the Court in your
2 own words what conversations you had with Boston
3 Police detectives regarding your daughter's
4 illness?

5 A Yes. I spoke to the detectives as they come to
6 my house numerous of times and I asked them to
7 not harass my daughter. Not not to harass her,
8 but not to keep coming to my house, bothering my
9 daughter, because my daughter was real sick and
10 she don't remember things and I said that put
11 more pressure on my daughter's head to try to be
12 aggravated with something that went on out on the
13 street which she don't know anything about.

14 Q Did you have any other discussions with a police
15 officer regarding your daughter's memory, her
16 ability to remember things?

17 A I said that to them in the beginning.

18 Q When you say that, what specifically?

19 A I said to them when they first started
20 questioning my daughter that my daughter's memory
21 wasn't good because she had malignant cancer at
22 the brain and she didn't need any more pressure
23 on her, she didn't remember from one day to the
24 other or from one incident to the other that

1 happened during the day.

2 Q Okay. And on the three occasions that your
3 daughter went to the Boston Police Department and
4 was shown photographs, how do you know that?

5 A Because my daughter told me. I had to take her
6 down there because I didn't want to be any part
7 of it. She told me what they were saying and
8 what she went down there for.

9 Q And what did she tell you happened on the three
10 occasions she was at the Boston Police Department
11 to look at photographs?

12 A She was telling me --

13 MR. MEIER: Objection.

14 A (continued) -- they was trying to make me --

15 THE COURT: Grounds for the objection,
16 sir.

17 MR. MEIER: Hearsay.

18 THE COURT: I'll give her a little
19 latitude on this. You may answer the question,
20 Ms. Alexander.

21 A (continued) She said that they were trying to
22 have her say it was somebody that she didn't see.
23 She didn't know who. When that incident
24 happened, she said, mommy, I didn't see nobody, I

1 didn't see who it was.

2 MS. SCAPICCHIO: Okay. I have no
3 further questions.

4 THE COURT: Thank you very much. Cross
5 examination.

6 MR. MEIER: Again, Judge, may I use the
7 easel, with the Court's permission?

8 THE COURT: You may.

9
10 CROSS EXAMINATION

11 BY MR. MEIER:

12 Q Are you able to see that?

13 A Yes, I can see that.

14 Q Okay. Ms. Alexander, where do you live now?
15 What street, without giving your address?

16 A Theodore Street.

17 Q Theodore Street. Showing you Exhibit No. 4 for
18 purposes of this hearing before Judge Rouse, do
19 you recognize the words, the number 72 Homestead
20 Street, the number 72 and the words, Homestead
21 Street, where I'm pointing right now?

22 A Yes.

23 Q And in a general way does this show where 72
24 Homestead Street is and where it was on the night